

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 256

Introduced by Assembly Member Vargas

February 4, 2003

An act to add Sections 110456 and 110592 to the Health and Safety Code, relating to adulterated food.

LEGISLATIVE COUNSEL'S DIGEST

AB 256, as amended, Vargas. Adulterated foods: candy: maximum allowable lead levels.

Under existing law, the State Department of Health Services is responsible for administering and enforcing the Sherman Food, Drug, and Cosmetic Law, which, among other things, prohibits the adulteration of food, or manufacturing, selling, delivering, holding, or offering for sale any adulterated food, as defined. Under existing law, violation of these provisions is a crime.

This bill would require the department to commence and maintain a program to monitor lead levels in all candy manufactured or sold in the state, including a sampling and testing program to determine the lead levels contained in the candy. The bill would require the department to establish maximum allowable lead levels for candy, as specified.

This bill would require the department, if it tests a candy and determines that the candy exceeds the maximum allowable lead level, to issue health advisory notices to county health departments alerting them to the dangers posed by consumption of the adulterated candy, and to notify the manufacturer and distributor of the candy that the candy is adulterated and shall not be sold or distributed in the state unless

further testing proves that the candy is in compliance with the maximum allowable lead level.

This bill would include in the definition of adulterated food any candy containing lead levels that exceed those established by the department pursuant to the bill, *except as specified*.

By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 110456 is added to the Health and
2 Safety Code, to read:

3 110456. (a) The department shall commence and maintain a
4 program to monitor lead levels in all candy manufactured or sold
5 in the state. The program established pursuant to this section shall
6 include a sampling and testing program to determine the lead
7 levels contained in the candy.

8 (b) The department shall establish maximum allowable lead
9 levels for all candy manufactured or sold in the state. In
10 establishing these levels, the department shall consider any
11 relevant standards, guidelines, and information available from the
12 federal Food and Drug Administration and the federal Centers for
13 Disease Control and Prevention, as well as any other source the
14 department deems appropriate.

15 (c) *If the lead level in a candy that is tested by the department*
16 *pursuant to subdivision (a) exceeds the maximum allowable lead*
17 *level, the department shall do both of the following:*

18 (1) *Issue health advisory notices to county health departments*
19 *alerting them to the danger posed by consumption of the*
20 *adulterated candy.*

21 (2) *Notify the manufacturer and the distributor of the candy*
22 *that the candy is adulterated and that the candy shall not be sold*



1 *or distributed in the state until further testing proves that the candy*
2 *is in compliance with the maximum allowable lead level.*

3 *(d) (1) If a candy exceeds the maximum allowable lead level,*
4 *the manufacturer or distributor may attempt to correct the problem*
5 *and resubmit the candy to the department for further testing.*

6 *(2) If the lead content of the candy is below the maximum*
7 *allowable lead level when it is retested, the department shall*
8 *provide the manufacturer or distributor and the county health*
9 *department with a letter stating that the candy is safe and that the*
10 *sale and distribution of the candy in the state may resume.*

11 *(3) If the candy still exceeds maximum allowable lead level*
12 *after it has been retested, the manufacturer or distributor shall take*
13 *corrective measures and continue to resubmit samples for testing*
14 *until the candy's lead content is below the maximum allowable*
15 *lead level if the manufacturer or distributor wishes to sell or*
16 *distribute the candy in the state.*

17 SEC. 2. Section 110592 is added to the Health and Safety
18 Code, to read:

19 110592. Any food is adulterated if it is candy and it contains
20 lead levels that exceed the levels established by the department
21 pursuant to Section 110456. *However, the candy is not adulterated*
22 *if the lead is a naturally occurring substance in the candy and if*
23 *the quantity of the lead in the candy does not render the candy*
24 *injurious to health.*

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.